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ABSTRACT

This document investigates the legal aspects of whether students in field learning situations are eligible for workmen's compensation. It is suggested that a student who works and receives a salary or wages from a state agency or other employer would be covered by the employer's workmen's compensation. If a student works for an agency or company but receives compensation only for his out-of-pocket expenses or receives no compensation at all, that student could be considered as a volunteer worker and not eligible for workmen's compensation. Although there are no court cases to refer to, a court may construe receiving room, board, or other necessities from an employer in lieu of money payment as employment. Whether or not a student is not given workmen's compensation, he may resort to common law tort action should an injury occur. (MJM)

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KENTUCKY WORKMEN'S COMPENSATION AND EXPERIENTIAL LEARNING SITUATIONS

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Preface

University sponsors of students in field learning situations and institutional supervisors of student interns often ask whether these students are covered by workmen's compensation and what liability is involved. The following pages are an attempt to answer these questions, although it should be noted that this is a vague legal area and there have apparently been no Kentucky court cases on the subject. The material was prepared by Steven G. Bolton, Attorney at Law, Frankfort, Kentucky, May 6, 1974.

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There are several questions concerning the possible coverage or non-coverage of students under the state workmen's compensation law while they are taking part in the University's experiential education program.

In order to answer these questions and give you a clear understanding of the implications of these answers let me first familiarize you with the pertinent sections of the law and then apply your situation to these provisions.

KRS 342.640 defines an employe and states who shall be considered employes. I will not attempt to set down the entire statute here, but basically it says that: "Every person... employed, in the service of an employer under any contract of hire..." is an employe. The statute goes on to break the definition on down to assistants of employes whether paid by the employer or employe. In essence everyone who is under an express or implied contract of hire is an employe except those specifically exempted by the next section which is KRS 342.650.

KRS 342.650 exempts agricultural workers, domestic servants under certain circumstances, people who work for a charitable or religious organization for aid or sustenance only, part-time handymen, people covered by certain federal compensatory statutes and people who would otherwise be covered but elect not to be covered. Thus the law is that for most employers it is mandatory

that they have coverage while most employes are covered unless they elect not to be.

Thus the conclusion is inescapable that the types of employment situations which you place your students in would normally be covered by the provisions of the state workmen's compensation law. The question raised then is whether the job conditions, wages and other benefits received are such that the students can be designated as employes.

Your assumption concerning students who work and receive a slary or wages from a state agency or other employer is correct. Those students would be covered by the employer's workmen's compensation coverage. The really tough question comes where the student works for an agency or company but receives compensation only for his out-of-pocket expenses or receives no compensation at all.

Research indicates that there is a very slim possibility that students who receive reimbursement for out-of-pocket expenses could be considered as employes in Kentucky, but purely volunteer workers would not be under any circumstances. The reasoning behind this is based on well-settled case laws. Unfortunately none of this case law is from Kentucky, whose courts have not yet had occasion to decide this question.

The general rule is that to be an employe (for workmen's compensation purposes) a person must receive wages of some kind LARSON, WORKMEN'S COMPENSATION 43.10. This includes "performing services for a valuable consideration"; DOYLE V. COMMONWEALTH, Pa., 153 Pa. Super. 611, 34 A.2d 812; GOODEN V. MITCHELL, DEL.,

21A2d 197; and someone "to whom the employer directly pays wages", BENSON V. HYGIENIC ARTIFICIAL ICE CO., MINN., 198 MINN. 250, 269 N.W. 460. Keeping this general rule in mind, the definition of wages in KRS 342.620(15) is

> "... in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel or similar advantages received from the employer..."

Thus if you have any students who are receiving room, board or other necessities from an employer in lieu of money payment, it is quite possible that the courts could construe this as employment. My feeling is that this would be a matter of degree and if the only thing involved is getting reimbursed for gas it would be stretching the point quite a bit to find a condition of employment.

Finally, if the student is working out of state, so long as the employment contract was made in Kentucky and the student can be classified as an employe pursuant to the guidelines I have enumerated, he can file a claim for workmen's compensation benefits in Kentucky, or depending on the situation, the state of his employers domocile.

As a final caveat I want to remind you that simply because a student is not covered by workmen's compensation this doesn't necessarily mean he has no remedy if he is injured in some way. Depending on the curcumstances he may have a common law tort action against the party responsible for his injury or several other possible causes of action.